

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-139607-001 DT

04/17/2013

HONORABLE JOSEPH KREAMER

CLERK OF THE COURT
S. Yoder
Deputy

STATE OF ARIZONA

KRISTIN SHERMAN

v.

JUSTIN OTIS MCMAHAN (001)

VICTORIA ELISABETH WASHINGTON
GARRETT W SIMPSON

CAPITAL CASE MANAGER

MINUTE ENTRY

CR2007-133812-001 Jesus Arturo Martinez, Jr.
CR2009-160953-001 Rudolph John Cano, Jr.
CR2010-007882-001 Jasper Phillip Rushing
CR2010-007912-001 Darnell Reuna Jackson
CR2010-007912-002 Eldridge Auzzele Gittens
CR2010-048824-001 James Clayton Johnson
CR2010-168096-001 Craig Michael Devine
CR2011-005473-001 Abel Daniel Hidalgo
CR2011-008004-001 Dennis Michael Levis
CR2011-008004-002 Thomas Michael Riley
CR2011-138281-001 Jason Neil Noonkester
CR2011-140108-001 Jose Alejandro Acuna Valenzuela
CR2011-150239-001 Ryan William Foote
CR2011-151833-001 Jonathan Ray Cole
CR2012-007399-001 Zachary William Baxter
CR2012-139607-001 Justin Otis McMahan
CR2012-154880-001 Manuel Antonio Gonzalez
CR2011-133622-001 Jesus Busso-Estopellan

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This Court has previously consolidated the defendants' Motions to Dismiss the Death Penalty ("*Furman* Motion") in these cases for consideration before this Court. The Court has set Oral Argument on the consolidated motions for April 19, 2013 at 10:30 a.m.

Following the January 25th hearing, at which five defendants appeared, the Presiding Judge, Criminal Department, consolidated an additional thirteen matters for argument and ruling before this Court, as requested by the defendants in their respective Motions for Joinder of Motion to Dismiss Death Penalty (*Furman* Motion). Each of the now-eighteen cases joined involves a defendant who is alleged to have committed a capital crime; as to each, the State is seeking death as a penalty. Based on observations made at the previous hearings, the Court has concerns about courtroom safety, including numbers (multiple attorneys representing each defendant and the State; multiple defendants; requisite security personnel and resources), seating logistics and safety.

At previous hearings involving the initial five defendants, the Court noted that the well was crowded with multiple counsel for each defendant, counsel for the state, and sheriff department officers. The Court further noted that the ability to segregate the incarcerated capital defendants was minimal. Consequently, defendants were placed in the jury box. In response to these concerns, the Court directed the parties to file a Notice setting forth whether each defendant would waive his presence at the April 19 Oral Argument. A number of defendants did file a Notice waiving their presence. Some did not, and indicated they would not waive their presence.

The April 19th hearing will include Oral Argument only, and will address only questions of law. Any facts to be developed or argued are those applicable generally in all death penalty cases, and are not personal to a particular defendant. The Court does not believe that the "... presence [of a particular defendant] has a relation, reasonably substantial, to the fullness of the opportunity to defend against the charge...[or that]...the presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence ..."
Snyder v. Massachusetts, 291 S.Ct. 97, 105-106 (1934); cited in *United States v. Gagnon*, 470 U.S. 522, 525, 105 S.Ct. 1482, 1484 (1985).

The Court finds that this conclusion is supported by the record, which indicates that the Motions for Joinder filed by the majority of the defendants simply duplicate, attach, or merely reference, the pleadings "filed by defendant in *State v. Eldridge Gittens*, CR2010-007912-002 and by other similarly-situated defendants," and adopt the stated arguments. Further, the interests of the individual defendants will be represented by respective counsel, a right protected by the Sixth Amendment of the U.S. Constitution and Article 24 of the Arizona Constitution. Consequently, none of the defendants will suffer damage, or prejudice, by being absent from the hearing.

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Accordingly,

THE COURT FINDS that the individual defendants need not be present at the April 19, 2013 Oral Argument.

THEREFORE, on the Court's own motion, given the nature of the hearing, the protections afforded the rights of the defendants, and the Court's security concerns and logistical considerations,

IT IS ORDERED directing that the individual defendants are not to be transported for purposes of the April 19th hearing on the *Furman* Motion.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.